

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION**

KATHRYN BAUMAN RUBENSTEIN)	
)	
<i>Plaintiff,</i>)	CIVIL ACTION NO.: 1:07-cv-798-MHT
)	
vs.)	
)	
BETTY JO BAUMAN, ET AL,)	
)	
<i>Defendants.</i>)	

**MOTION TO DISMISS OR, IN THE ALTERNATIVE,
FOR JUDGMENT ON THE PLEADINGS**

COME NOW, Defendants, Wallace Cooley, Tom Ziegenfelder, incorrectly named as Tom Zeigenfelder, and Ziegooley Realty, LLC, incorrectly named as Zeigooley, Inc., by and through their attorney of record and pursuant to Rule 12(b)(6) and Rule 12(c) of the *Federal Rules of Civil Procedure* (FRCP), move this Honorable Court to dismiss Plaintiff's Complaint, First Amended Complaint and Second Amended Complaint for failure to state any claim against said Defendants upon which relief can be granted. In support of this Motion, Defendants show unto the Court as follows:

1. Plaintiff has failed to comply with the Order of the U.S. Magistrate Judge Wallace Capel, Jr., dated September 13, 2007, by timely filing of her Second Amended Complaint in accordance with the Court's Order. Additionally, Plaintiff has failed to plead with specificity, in any of her Complaints, facts or claims against any of the stated Defendants as directed by the Court's Order.

2. Plaintiff purports to assert against the Defendants a federal Section 1983 case based on their supposed conspiracy "to defraud and deny Plaintiff her Civil Rights including

due process in Houston County Circuit Court Case CV-02-5063 and the subsequent appeal before the Alabama Court of Civil Appeals and the Alabama Supreme Court.” Plaintiff’s Complaint, as amended, fails to allege any facts or claims against any of these Defendants which would support any claim for relief.

3. Even though these Defendants were named as party Defendants in the Plaintiff’s Complaint, as amended, Plaintiff fails to make any further statements or allegations in her Complaint, as amended, setting forth any facts, claims, acts, omissions, or legal theories of liability against these said Defendants.

4. Plaintiff’s Complaint, as amended, is in all respects legally deficient under any set of facts that she can prove consistent with her Complaint.

5. The claims against these Defendants, if any, as set forth in Plaintiff’s Complaint, as amended, are barred by the doctrine of res judicata, collateral estoppel and the *Rooker-Feldman* doctrine.

6. Said Defendants reserve the right to seek sanctions against Plaintiff and reimbursement for attorney’s fees and costs pursuant to Rule 11 of the FRCP.

WHEREFORE, based on the foregoing, said Defendants request and pray that this Court grant their Motion to Dismiss. Defendants pray for such other, different and further relief as the Court deems appropriate and reasonable under the circumstances.

Respectfully submitted.

PRIM, FREEMAN & MENDHEIM

/s/ R. Cliff Mendheim

R. Cliff Mendheim (MEN008)
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CERTIFICATE OF SERVICE

I hereby certify that on September 21, 2007, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to all counsel/parties of record with the following exceptions to be notified via regular U.S. Mail, postage pre-paid:

Kathryn Bauman Rubenstein
P.O. Box 2243
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/s/ R. Cliff Mendheim

Of Counsel